[A summary of each section has been inserted in italics and bracket before each section.]

BILL NUMBER: _____ INTRODUCED
BILL TEXT

INTRODUCED BY

_____, 2005

An act to add Sections 21178, 21179, 21159.27, 21167.9, 21181, 21200-21214 to the Public Resources Code, amend Sections 21159.21, 21159.26, 21081.6, 21167.6, 21168.9, 21100, 21081, 21093, 21094, 21157.1, 21157.5 of the Public Resources Code and delete Sections 21178, 21179, 21159.27, 21167.9, 21181 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

Existing law requires
This bill would require

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

[Section 1: The Legislative findings and declarations will be drafted after the substantive legislative language has been finalized.]

SECTION 1. The Legislature finds and declares all of the following: [insert Legislative declarations]

SECTION 2. [Front Load CEQA Process at the Plan Level and Streamline CEQA at the Project Level.]

[Section 2A: Where a planning action, such as a general plan, contains a reasonably detailed projection of future land uses, locations of housing sites, and intensities of housing development, and the environmental impact report for that planning action analyzes cumulative impacts, alternatives and

growth-inducing impacts and other impacts best analyzed on a regional basis and meets certain other criteria, then the environmental analysis of housing development projects consistent with that planning action does not need to analyze cumulative impacts, alternatives and growth-inducing impacts or other regional impacts. Judicial review is limited to challenging the project as being inconsistent with the planning action. The substantial evidence standard is the only standard for this review.]

Sec. 2A: Section 21178 is added to the Public Resources Code, to read:

21178. (a) "Qualified environmental impact report" means an environmental impact report certified for a general plan, area plan, community plan, specific plan, redevelopment plan, or local coastal plan, or an amendment to any of those plans, that satisfies the following requirements:

(1) The planning action evaluated by the environmental impact report contains a reasonably detailed projection of future land uses, locations of housing sites, and intensities of housing development.

(2) The environmental impact report identifies the feasible mitigation measures that will be applied to housing development projects that are consistent with the planning action, and an adequate mitigation, monitoring and reporting program has been adopted after certification of the environmental impact report.

(3) The environmental impact report contains an analysis of alternatives, cumulative impacts, and growth-inducing impacts relevant to development of housing at the intensity specified in the plan. The environmental impact report may also contain an analysis of other area-wide impacts relevant to development of housing at the intensity specified in the plan.

(4) The lead agency for the environmental impact report has made a finding that the standards in subparts (a)(1) through (a)(3) are met at the time it certifies the environmental impact report for the planning action. The finding shall specify whether other area-wide impacts, in addition to alternatives, cumulative impacts, and growth-inducing impacts, had been adequately analyzed.

(b) "Housing development project" means a single-family residential development, a multiple-family residential development, or a mixed-use development in which at least 50% of the development area is devoted to residential units.

(c) If a housing development project is consistent with a planning action subject to a qualified environmental impact report that was certified for that planning action less than ten years prior to the filing of an application for the housing development project, then no further analysis of alternative sites, growth-inducing impacts, cumulative

impacts, or other area-wide impact specified in findings pursuant to subsection (a)(4) is required.

(d) If a housing development project is consistent with a planning action subject to a qualified environmental impact report that was certified more than ten years prior to the filing of an application for the housing development project, the lead agency for the housing development project must determine whether any substantial changes have occurred with respect to the circumstances under which the qualified environmental impact report was certified that would have a material effect on the analysis of alternative sites, growth-inducing impacts, cumulative impacts, or other area-wide impacts. If the lead agency for the housing development project finds there have not been any such substantial changes, then no further analysis of alternative sites, growth-inducing impacts, cumulative impacts, or other area-wide impact specified in the findings pursuant to subsection (a)(4) is required.

(e) If the lead agency for the housing development project determines that no further analysis of alternative sites, growth-inducing impacts, cumulative impacts, or other area-wide impact is required under subsections (c) or (d), the lead agency shall adopt those portions of the mitigation, monitoring and reporting program identified in the qualified environmental impact report that are applicable to the housing development project.

(e) Judicial review of any determinations, findings, decision made, and any environmental documents prepared, pursuant to this section shall be in accordance with Section 21168.5. In such a proceeding, the reviewing court shall determine only whether the following are supported by substantial evidence:

(1) The lead agency's determination that the housing development project is consistent with a general plan, area plan, community plan, specific plan, redevelopment plan, or local coastal plan, or an amendment to any of those plans that was the subject of a qualified environmental impact report; and

(2) The lead agency's finding that no substantial changes have occurred pursuant to (d) if the qualified environmental impact report was certified more than ten years prior to the filing of an application for the housing development project.

The substantial evidence standard shall be the exclusive standard for reviewing such questions.

> *[Section 2B: Section 2A contemplates a general plan that has more detail than typical general plans. Section 2B does not require a more detailed general plan. Section 2B provides that if a residential development project is consistent with a planning document, then the environmental analysis of that project is limited to significant new impacts or substantial increases in severity of a previously identified impact. The plaintiff would have the burden of proving that the lead agency's decision was not supported by substantial evidence. This is the only burden shifting section.]*

Sec. 2B. Section 21179 is added to the Public Resources Code, to read:

21179. (a) If a residential development project is consistent with a general plan, area plan, community plan, specific plan, redevelopment plan, or local coastal plan, or an amendment to any of those plans, and the site of the project has been zoned to accommodate such a development, and an environmental impact report was certified for that planning or zoning action, the application of this division to the approval of that residential development project shall be limited to new significant impacts not previously identified in such an environmental impact report, or substantial increases in the severity of a previously identified significant effect.

(b) The lead agency shall prepare an initial study that evaluates whether a project meeting the criteria set forth in subsection (a) will cause a new significant impact not previously identified in such an environmental impact report, or if the project will cause a substantial increase in the severity of a previously identified significant effect. If the project will cause such an impact or increase, the lead agency may prepare a mitigated negative declaration if such impact or increase can be mitigated to a less than significant level, or may prepare a focused environmental impact report that evaluates the new or more severe significant adverse effect, feasible mitigation measures available to avoid or minimize such effect, and feasible alternatives available to avoid or minimize such effect; provided, however, that reductions to the number of residential units and the effects associated with the number of such residential units (including but not limited to traffic and parking effects) shall not be identified or evaluated as feasible alternatives.

(c) If the lead agency determines that a project meeting the criteria set forth in subsection (a) does not require preparation of a mitigated negative declaration or focused environmental impact report, the lead agency shall circulate for public review and comment the initial study and proposed findings concluding that the project would not cause any significant new or substantially increase in the severity of impacts than those identified in the prior approved environmental impact report(s) identified in subsection (a). Following a public review period of no less than twenty (20) days, the lead agency may adopt or amend such findings in response to public comments, and may either require a focused environmental impact report as described in subsection (b) or may approve or disapprove the project.

(d) A lead agency that approves a project in conformance with this section shall file a notice as set forth in section 21152, and shall have thereby fully complied with this division. In any action or proceeding to attack, review, set aside, void, or annul approval of such a project on grounds of noncompliance with this division, the inquiry shall extend only to whether the plaintiff has proven, by a preponderance of the evidence, that the agency has not proceeded in a manner required by this section or if the determination or decision is not supported by substantial evidence as set forth in section 21168.5.

SECTION 3 [Develop Statutory Exemptions]

[Sections 21159.20, 21159.22, 21159.23, 21159.24, and 21159.25 are deleted]

[Section 3A: Revises the statutory exemptions in Article 6 to reduce and simplify the qualifying criteria. A project consistent with the density provisions of a planning action, and that meets certain other requirements aimed at establishing the project is unlikely to have an impact on the environment or on the health of persons within the project, is exempt from CEQA.]

Sec. 3A: Section 21159.21 is amended to read:

21159.21. A housing project qualifies for an exemption from this division ~~pursuant to Section 21159.22, 21159.23, or 21159.24~~ if it meets ~~the criteria in the applicable section and all of~~ the following criteria:

(a) The project is consistent with *the density provisions of* any applicable general plan, *area plan, community plan,* specific plan, *redevelopment plan, or* ~~and~~ local coastal program, *or an amendment to any of those plans and* ~~including~~ any mitigation measures required by a plan or program, as that plan or program existed on the date that the application was deemed complete and with any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

~~(b) Community-level environmental review has been adopted or certified.~~

(*b*~~c~~) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(*c*~~d~~) The ~~site of the~~ project does not *adversely affect any* ~~contain~~ wetlands, does not *provide any valuable* ~~not have any value as a~~ wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete, *or any such effect on wetlands, valuable habitat, or species can be mitigated to a level of insignificance in compliance with state and federal requirements.* For the purposes of this ~~subdivision~~ *subsection*, "wetlands" has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and "*valuable* wildlife habitat" means *habitat that is occupied by species protected in the statutes identified in this subsection*. ~~the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.~~

~~(e)The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.~~

((*d*~~f~~) The site of the project is subject to ~~a preliminary endangerment~~ *an environmental* assessment prepared by a registered environmental assessor *that is adequate* to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. *A preliminary endangerment assessment shall be deemed adequate for this purpose.*

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(~~g~~*e*) The project does not have a significant effect on historical resources pursuant to Section 21084.1 *or any significant effect on historical resources can be mitigated to a level of insignificance in compliance with state and federal requirements.*

(~~h~~*f*) The project site is not subject to any of the following:
(1) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.
(2) An unusually high risk of fire or explosion from materials stored or used on nearby properties.
(3) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.
(4) Within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.
(5) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(*g*~~i~~) ~~(1)~~The project site is not located on developed open space.

(*12*~~)~~For the purposes of this ~~subdivision~~ *subsection*, "developed open space" means land that meets all of the following criteria:

(A) Is publicly owned, or financed in whole or in part by public funds.
(B) Is generally open to, and available for use by, the public.

(C) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(*2*~~3~~)For the purposes of this subdivision, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(*h*) The project site is not located within the boundaries of a state conservancy.

(i) *The project promotes higher density housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.*

(j) For purposes of this section, a "housing project" means a project consisting of residential units only.

[Section 3B: Provides that a lead agency may not require reductions in number of residential units as a mitigation measure.]

Sec. 3B: Section 21159.26 is amended to read:

21159.26. With respect to a project that includes a housing ~~residential development~~ project, a public agency -*may* not *require reductions to the number of residential units and the effects* associated *with the number of such residential units (including but not limited to traffic and parking effects) as mitigation measures nor identify such reductions as feasible alternatives.*
~~reduce the proposed number of housing units as a mitigation measure or project alternative for a particular significant effect on the environment of it determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation. This section does not affect any other requirement regarding the residential density of that project.~~

[Section 3C. Requires Resources Agency and OPR to establish standardized mitigation measures for construction impacts. Requires Resources Agency and OPR to develop energy efficiency standards that will exempt developments from evaluating energy impacts. Provides that a general plan update to increase residential density shall not be deemed to have a growth-inducing impact.]

Sec. 3C. Section 21159.27 is added to read:

21159.27.(a) The Resources Agency, in consultation with the State Clearinghouse of the Governor's Office of Planning and Research, shall develop and adopt as part of the CEQA guidelines pursuant to Section 21083 the following standards:

(1) ~~A lead agency may adopt an ordinance~~ *Standards setting forth mitigation measures to avoid or minimize potential substantial adverse impacts from construction activities for housing development projects, including without limitation, impacts from noise, dust, stormwater, de-watering, traffic safety, and air quality.*
(2) *Energy efficiency standards that are consistent with national standards for developing high-performance, sustainable buildings. A residential development project that meets such energy efficiency standards shall be exempt from any requirement to evaluate energy impacts under this division.*

(b) Resources Agency shall, at least once every two years, review the standards adopted pursuant to this section and shall update them in light of any new information or technological developments.

(c) A general plan update or amendment to increase residential density or increase the number of authorized residential units shall not be deemed to have a growth-inducing effect for any purpose under this division.

SEC. 4 [Streamline litigation: Clarify record preparation requirements]

[Section 4a amends existing record preparation requirements to require a lead agency to maintain the record of proceedings at a single physical location, include only the documents reviewed by the agency, and be organized in a reasonable manner. In subsequent litigation this document collection will constitute the record of proceedings.]

Sec. 4A Section 21081.6 of the Public Resources Code is amended to read:

21081.6. (a) When making the findings required by paragraph (1) of ~~subdivision~~ *subsection* (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources

affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based. *The record of proceedings must be maintained at a single physical location, include only the documents actually reviewed by the lead agency, and be organized in a manner reasonably designed to allow the public to understand the basis for the lead agency's decision. The record of proceedings certified by the agency in any subsequent legal challenge under this division shall be limited to the documents and other materials at the identified location and in the possession of the identified custodian.*

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

[Section 4B provides a detailed procedure for a plaintiff to prepare a record of proceeding, which requires the lead agency to make available the collection of previously collected documents, and sets time limits. It also encourages preparing the record of proceedings in electronic format.]

Sec 4 B: Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in ~~subdivision~~ *subsection* (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) *Instead of filing a request with the public agency under subsection (a),* ~~T~~*t*he plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency~~, within the time limit specified in this subdivision~~. *A plaintiff or petitioner's election to prepare the record of proceedings together with the complaint or petition shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.*

(A) Within 10 business days of receipt of the plaintiff or petitioner's election to prepare the record of proceedings, the custodian, specified pursuant to subsection (a)(2) of section 21081.6, shall make the documents or other material that constitute the record of proceedings available to the plaintiff or petitioner at the location specified pursuant to subsection (a)(2) of section 21081.6.

(B) The public agency shall not charge any fee for making the specified documents available to the plaintiff or petitioner pursuant to this subsection. The documents and other materials that make up the record of proceedings must be identified and set aside at the time of project approval in a specific location pursuant to subsection (a)(2) of section 21081.6.

(C) The public agency shall make reasonable arrangements with the plaintiff or petitioner to facilitate photocopying, or scanning of the documents or materials into an electronic format, in order to expedite the preparation of the record of proceedings and to reduce the costs of preparation. In order to obtain necessary copies, the plaintiff or petitioner may request the public agency's assistance or may supply their own copy service. The agency is under no obligation to agree to provide copying services for the plaintiff or petitioner. If

the agency agrees to assist the plaintiff or petitioner with making copies of the record of proceedings, charges for such services shall be limited to the agency's direct cost of photocopying or reproduction, as defined and applied under California's Public Records Act (Gov. Code, § 6250, et seq.).

(D) After making all of the documents and other materials available at the location designated pursuant to subsection (a)(2) of the section 21081.6, the custodian shall notify the plaintiff or petitioner in writing of the date such access was provided. The plaintiff or petitioner shall have 60 days from the date of issuance of the custodian's notice to submit the record of proceedings to the public agency for certification.

(E) The public agency shall certify the accuracy of the record of proceedings within 10 business days. Applications for extensions of, and penalties for violating, the time limit for certification shall be considered pursuant to the standards set forth in subsections (c) and (d). Any costs or fees associated with the agency's certification of its record of proceedings shall be borne by the public agency.

(F) If the plaintiff or petitioner fails to prepare the record of proceedings within the time allotted under this section, the public agency may seek an order of the court setting aside the plaintiff or petitioner's election. Such order shall be granted by the court absent a showing of good cause by the plaintiff or petitioner. Good cause under this provision is co-extensive with exceptions justifying an agency's own delays, and the same degree of deference to the plaintiff or petitioner shall apply under this provision as would be extended by the court to a public agency seeking an extension by order of the court under subsection (c).

(c) The time limit established by ~~subdivision~~ *subsection* (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions that may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency, or plaintiff or petitioner fails to prepare and certify the record within the time limit established in *this section* ~~paragraph (1) of subdivision (b)~~, or any continuances of that time limit, the plaintiff or petitioner, *or public agency* may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings ~~shall include, but~~ is ~~not~~ limited to~~, all of~~ the *documents and other materials at the location and in the possession of the custodian identified by the lead agency pursuant to section 21081.6(a)(2).*
~~following items:~~

~~(1) All project application materials.~~

~~(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.~~

~~(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.~~

~~(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.~~

~~(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.~~

~~(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.~~

~~(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.~~

~~(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.~~

~~(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.~~

~~(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or~~

~~included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.~~

~~(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.~~

(f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record. *Where it is cost effective and feasible to do so, the record of proceedings shall be prepared in an electronic format that is easily searchable. Reviewing courts are encouraged to accept the lodging of electronically formatted records.*

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this ~~subdivision~~ *subsection* precludes an election to proceed by appendix, as provided in Rule 5.1 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

[Section 5 strengthens the existing requirement that if a court finds that the lead agency failed to comply with CEQA in some respect, the court should let those parts of the project that are not affected by the non-compliance go forward.]

SEC. 5. [Streamline Litigation: narrow remedies]

Section 21168.9 of the Public Resources Code is amended to read:

21168.9. (a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:

(1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part, *subject to subsection (b) below.*

(2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division. *Prior to issuing such a mandate, the court must specify the project activity or activities that would have such a prejudicial impact and explain the nature of the prejudicial impact on the consideration or implementation of mitigation measures or alternatives. Such determinations must be based on substantial evidence in the administrative record.*

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

(b) Any order pursuant to ~~subdivision~~ subsection (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division. *The court must fashion remedies that will allow all or any portion of the project that is consistent with this division to go forward, and will include in its order an explanation as to why the mandates are necessary to achieve compliance.* The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. ~~However, T~~*T*he order shall be limited to that portion of a determination, finding, ~~or~~ decision, *or portion of the environmental document prepared pursuant to this division* or the specific project activity or activities found to be in noncompliance ~~only if~~ *unless* a court finds that (1) the portion or specific project activity or activities are *not* severable, (2) severance will ~~not~~ prejudice complete and full compliance with this division, ~~and~~ *or* (3) the court has ~~not~~ found the remainder of the project to be in noncompliance with this division. *Such findings must be made on the record and based on substantial evidence in the administrative record.* The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division *by bringing the noncompliance identified in the court's order into compliance*.

(c) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly provided in this section, nothing in this section is intended to limit the equitable powers of the court.

[Section 6: creates an alternative and streamlined administrative procedure for review of CEQA decisions. It allows a lead agency to elect to have a CEQA decision subject to this section, however, any party can then initiate review if it has a dispute. The only exception to this administrative review would be when a petitioner wants to get immediate injunctive relief, which it would have to obtain through the Superior Court, because an ALJ process may not be set up to handle

temporary injunctions. It would provide for a 180 day review period in most cases, and specifies shorter deadlines within the process. The decision of the ALJ is reviewable only in the Court of Appeal.]

SEC. 6. [Streamline litigation: create neutral ALJ]

Section 21167.9 is added to the Public Resources Code, to read:

21167.9. As an alternative to the procedures set forth in Public Resources Code Sections 21167, 21167.1, 21167.3, 21167.4, 21167.5, 21167.6, 21167.6.5, 21167.7, 21167.8, 21168, 21168.5, 21168.7, 21168.9 for judicial review of actions by public agencies, other than the Public Utilities Commission, under this division, a public agency may elect to have its decisions reviewed under the expedited administrative review procedure set forth in this section:

(a) Any public agency which elects to have this section apply to the review of its decisions under this division shall include in its notice required by subsections (a) and (b) of Section 21108 and subdivisions (a) and (b) of Section 21152 the following language: Review of this decision shall be governed by the expedited administrative review by the Secretary for Resources provided by Public Resources Code Section 21167.9, and no court shall have jurisdiction under this division until the conclusion of that review by the administrative law judge appointed by the Secretary, except for those proceedings specified below in subsection (k)

(b) The Secretary for Resources shall appoint an administrative law judge or judges to receive, review, hear and determine all requests for review under this section. Once the secretary has designated an administrative law judge or other person to determine a request for review, such determination shall not be reviewable by the secretary. The secretary may adopt regulations governing this review process consistent with this section.

(c) Review may be initiated by any party which would have standing to file an action in Superior Court by filing a written request for review specifying the alleged violations of this division, within the time periods set forth in this division for judicial review. The request for review shall also designate the real parties in interest for the public agency approval identified in Section 21167.6.5. Any request for review shall be accompanied by a filing fee in an amount established by the Secretary, which amount should generally not be greater than the filing fees for new civil actions established by the superior courts.

(d) At the time that a request for review is filed, the requesting party shall file a request that the respondent public agency prepare a record of proceedings related to the action for which the review is sought. This request, together with the request for review, shall be served personally upon the public agency and the required real parties in interest not later than 10 days form the date that the request for review was filed.

(e) The record of proceedings shall be prepared, certified and filed with the administrative law judge pursuant to the procedure set forth in section 21167.6. The public agency shall make available at its office a copy of the record of proceedings to the party seeking review and any real parties in interest and shall give notice of such availability to the party requesting review.

(f) Within 30 days of the filing of the record of proceedings, the party requesting review shall file a brief specifying the violations of this division which occurred as a result of this approval, and citing with particularity the portions of the record of proceeding which demonstrate these violations. If the party requesting review believes that documents or other material exist which should have been included in the record of proceedings, it shall lodge those items with its brief. Within 20 days of the filing of this opening brief, the public agency and any real parties in interest may file their own briefs in opposition. Within 10 days thereafter, the party requesting review may file a brief which replies to the opposition.

(g) The administrative law judge shall review the record of proceedings and the briefs and render a decision. This decision shall specify whether or not the party requesting review has standing to file the request, whether the request was timely filed, whether the record of proceedings was complete and sufficient, and whether the approval of the public agency complied with this division. The administrative law judge shall make the decision based on the written record submitted. Prior to any decision, the administrative law judge may propound written requests for information or clarification to any of the parties to the review, and may receive information or supplemental briefs in response as the administrative law judge may specify. All such material shall be available to the public in a docket. The administrative law judge shall not hold a hearing or otherwise communicate with the parties or obtain or review information outside of material or orders filed with or by the secretary and set forth in the public docket. The administrative law judge shall not conduct settlement meetings or proceedings, nor shall the administrative law judge's actions be delayed by the pendency of settlement discussions or proceedings.

(h) If the administrative law judge agrees that that additional evidence advanced by the party requesting review is relevant and was received and considered by the public agency in making its decision, but improperly excluded from the record of proceedings filed by the agency, the administrative law judge may add this evidence to the record of proceedings and render a decision. If the administrative law judge agrees that the party requesting review was prevented from presenting relevant evidence in violation of this division and the rules of procedure of the public agency rendering the decision under review, the administrative law judge shall remand the matter to the public agency for consideration of this evidence and a new decision under this division.

(i) The scope of the administrative law judge's review shall be limited to whether the public agency complied with this division, and the administrative law judge shall not exercise independent judgment on the evidence and shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record. The

administrative law judge shall consider only substantial evidence as defined by Section 21082.2. The administrative law judge shall ordinarily render a decision within 120 days of the filing of a request to review a public agency decision, and may dismiss any review proceeding or strike and disregard any filing for failure of any party to comply with this section. For good cause shown, the administrative law judge may by written order filed with the public docket specify that an additional 60 days may be allowed for the administrative law judge to render a decision. Within 180 days from the filing of a request for review the administrative law judge shall render a decision in all cases.

(j) The administrative law judge's decision shall uphold or overturn the public agency's decision. The administrative law judge's decision shall specify which party shall pay the filing fee and the reasonable cost of the public agency's preparation of the record of proceedings. The administrative law judge may review the public agency's cost of the administrative record to determine its reasonableness.

(k) If any party challenging a public agency decision otherwise governed by subsection (a) believes that there are grounds for an immediate temporary restraining order, preliminary injunction or stay of the decision pending review of that decision, then such party may elect to file an action in superior court and this section shall not otherwise govern review of that public agency decision, provided however that the superior court issues a temporary restraining order, preliminary injunction or stay, which order, injunction or stay is still pending 20 days after the filing of any such action or proceeding under this division. Should the court fail to issue and maintain in effect such order, injunction or stay as specified in this subsection, the court shall dismiss the action and the party seeking review under this section must file a request for review within 20 days of the court's dismissal.

(l) While any public agency decision is under review under this section, all other public agencies shall assume that the decision of the public agency complies with this division, and shall approve or disapprove the project in the same manner as section 21167.3.

(m) The decision by the administrative law judge, or the failure to act within the 180 time limit of this section, may be reviewed only by writ of mandate from the Court of Appeal to the administrative law judge, and shall not be reviewable in Superior Court. The Court of Appeal shall uphold the administrative law judge's decision if the administrative law judge has proceeded in a manner required by law, and if the decision is supported by substantial evidence in the light of the whole record. Review of the administrative law judge's decision shall be governed by Section 21167.6(g),(h) and (i).

(n) Decisions of the administrative law judge under this section shall be made available to the public, and may be cited as precedent in subsequent decisions.

> *[Provides that when a housing project is consistent with a planning action and the Regional Housing Needs Assessment, the lead agency does not have to complete the no project alternative or analyze alternative sites.]*

Section 7 [Streamline litigation: Clarify Alternatives Analysis]

Section 21100 is amended to read:

21100. (a) All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be avoided if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, *area plans, community plans,* specific plans, *redevelopment plans, zoning ordinances,* and local coastal plans, may be used in cumulative impact analysis.

(f) In satisfying the obligation to address alternatives to the proposed project pursuant to subsection (b)(4) with respect to a housing development project that is consistent with a general plan, area plan, community plan, specific plan, redevelopment plan, or local

coastal plan, and that is consistent with the Regional Housing Needs Assessment for the local government with jurisdiction over the housing development project, the lead agency need not include a no project alternative or an alternative consisting of development of a different site.

Section 8 [Streamline Litigation: Confirm Overriding Consideration]

[Section 8A: Confirms that a public agency could find that the need to accommodate projected housing needs outweighs significant effects on the environment.]

SECTION 8A. Section 21081 of the Public Resources Code is amended to read:

21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including the *provision of housing needed to support the State's housing goals and* considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of ~~subdivision~~ *subsection* (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project *such as the provision of housing needed to support the State's housing goals* outweigh the significant effects on the environment.

[Sections 8B-8E: provide that a lead agency can prepare a mitigated negative declaration that tiers from a prior certified EIR. If a statement of overriding consideration is included in a plan level EIR, a subsequent consistent project may rely on such statement as a basis for an MND.]

SECTION 8B. Section 21093 of the Public Resources Code is amended to read:

21093. (a) The Legislature finds and declares that tiering of environmental impact reports will promote construction of needed housing and other development projects by (1) streamlining regulatory procedures, (2) avoiding repetitive discussions of the same issues in successive environmental impact reports, and (3) ensuring that environmental impact reports prepared for later projects which are consistent with a previously approved policy, plan, program, or ordinance concentrate upon environmental effects which may be mitigated or avoided in connection with the decision on each later project. The Legislature further finds and declares that tiering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports.

(b) To achieve this purpose, environmental impact reports shall be tiered whenever feasible, as determined by the lead agency. *In accordance with the procedures set forth in Section 21094, where a lead agency has prepared and certified an environmental impact report, the lead agency may tier from that prior certified environmental report by preparing a mitigated negative declaration or environmental impact report.*

SECTION 8C. Section 21094 of the Public Resources Code is amended to read:

21094. (a) Where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report *or mitigated negative declaration*, except that the report on the later project need not examine those effects which the lead agency determines were ~~either~~ (1) mitigated or avoided pursuant to paragraph (1) of ~~subdivision~~ *subsection* (a) of Section 21081 as a result of the prior environmental impact report, ~~or~~ (2) examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project*; or (3) examined at a sufficient level of detail in the prior environmental impact report to enable the lead agency for the prior action to determine that specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or alternatives identified in the environmental impact report, and the lead agency found that such considerations outweighed the significant effects on the environment of the prior action pursuant to section 21081(b).*

(b) This section applies only to a later project which the lead agency determines (1) is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and (3) is not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies which propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

SECTION 8D. Section 21157.1. of the Public Resources Code is amended to read:

21157.1. The preparation and certification of a master environmental impact report, if prepared and certified consistent with this division, may allow for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the
environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency, based on the initial study, determines that a proposed subsequent project will have no additional significant effect on the environment, as defined in ~~subdivision~~ *subsection* (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or alternatives may be required, the lead agency shall make a written finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. No new environmental document nor findings pursuant to Section 21081 shall be required by this division. Prior to approving or carrying out the proposed subsequent project, the lead agency shall provide notice of this fact pursuant to Section 21092 and incorporate all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where a lead agency cannot make the findings required in ~~subdivision~~ *subsection* (c), the lead agency shall prepare, pursuant to Section 21157.~~7~~**5**, either a mitigated negative declaration or environmental impact report.

SECTION 8E. Section 21157.5 of the Public Resources Code is amended to read:

21157.5. (a) A proposed mitigated negative declaration shall be prepared for any proposed subsequent project if both of the following occur:

(1) An initial study has identified potentially new or additional significant effects on the environment that were not analyzed in the master environmental impact report.

(2) Feasible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project, before the negative declaration is released for public review, in order to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur.

(b) The lead agency is not required to make findings under Section 21081(a)(3) and (b) for the significant effects of any proposed subsequent project if both of the following occur:

(1) Those significant effects were examined at a sufficient level of detail in the prior master environmental impact report to enable the lead agency to determine that specific economic, legal, social, technological, or other considerations, including the provision of housing needed to support the State's housing goals and considerations for the provision of employment opportunities for highly trained workers, made infeasible the mitigation measures or alternatives identified in the master environmental impact report; and

(2) The lead agency found that such considerations outweighed the significant effects on the environment.

(c) If there is substantial evidence in light of the whole record before the lead agency that the proposed subsequent project may have a significant effect on the environment and a mitigated negative declaration is not prepared, the lead agency shall prepare an environmental impact report or a focused environmental impact report pursuant to Section 21158.

[Section 9: Requires Resources Agency to prepare a study to further the goals of making CEQA information available electronically.]

Section 9 [Streamline Litigation: Make CEQA Data More Accessible]

Section 21181 is added to read:

21181. (a) The Legislature recognizes that many lead agencies have established web sites that link to digital versions of their CEQA documents. The Legislature encourages all state and local lead agencies to increase efficiency of CEQA document preparation through use of information technology systems such as geographic information systems (GIS); to prepare their CEQA documents in digital formats enabling electronic access; and to establish CEQA document web sites accessible to the public.

(b) The Resources Agency and OPR shall prepare a study by September 30, 2007 to further implement the policy on CEQA document databases established in Section 21003(d). The study shall recommend the most cost-effective ways to make information in past CEQA documents accessible electronically. The study shall also address the varying quality and accuracy of information in CEQA documents, and funding methods to implement the study recommendations.

(c) Alternatives to be considered in the study include but are not limited to: requiring all CEQA documents to be prepared in standardized digital formats; minimum standards for lead agency web sites with links to environmental documents; a state portal for electronic access to all on-line CEQA documents; and expansion of the following California Environmental Resources Evaluation System (CERES) data bases to include links to on-line CEQA documents or data sets in these documents: the CEQAnet data base, the California Spatial Information Library, and the California Environmental Information Library.

(d) Upon completion of the study the Resources Agency, in consultation with the State Clearinghouse of the Governor's Office of Planning and Research, shall provide a report to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources regarding the need for a grant of additional statutory authority and funding in order to implement the recommendations of the report.

[Section 10: Proactive Resource Planning. Lets a landowner voluntarily enter into a planning agreement with a local agency to develop a plan for a geographic area of any scope. The plan would include development projects, mitigation for such projects, and extra "beyond mitigation" conservation projects. The plan would be analyzed under CEQA. Parties wanting to develop subsequent consistent projects would enter into implementing agreements with the lead agency. Subsequent consistent projects could be challenged under CEQA only on the ground that they were not consistent.]

SECTION 10 [Proactive Resources Planning]

Chapter 7 is added to Division 13: Environmental Quality to read as follows:

21200. This chapter shall be known, and may be cited, as the Proactive Resources Planning Act.

21201. Legislative policy

21202. Definitions

a. *"Local agency" has the meaning set forth in Section 5(a).*
b. *"Plan" means the plan developed pursuant to the planning agreement that meets the criteria of Section 7 and that has been approved by the local agency pursuant to Section 9.*
c. *"Planning agreement" means the proactive resources planning agreement that meets the criteria described in Section 5.*
d. *[Other definitions as needed]*

21203. Compliance with this chapter satisfies the requirements of this division with respect to: (i) any governmental approval of the planning agreement, plan, and subsequent projects that are substantially consistent with the plan, and (ii) any necessary amendments to a general plan or specific plan required for implementation of the plan and/or subsequent projects.

21204. The Proactive Resources Planning Agreement

a. Any person, independently or with others, may enter into a planning agreement with a local agency, which includes any city, county, or other local agency with land use planning responsibility under state law.

b. The planning agreement must identify the geographic scope of the planning area and outline the process for developing a plan suitable for that area.

c. The planning agreement will indicate whether the proposed plan is consistent with the existing general plan and/or specific plan (if any) applicable to the planning area. If the proposed plan is not consistent, the planning agreement will indicate how such general plan and/or specific plan will be amended. [If the proposed plan is not consistent with the existing general plan and/or specific plan, should there be some relief under planning and zoning law, e.g., not subject to limits on number of times a general plan can be amended? Or should the proactive resource plan be deemed to be a type of specific plan?]

d. The planning agreement will set forth a process for coordinating with all federal, state or local public agencies that would have responsibility for carrying out or approving the plan and the projects contemplated by the plan to ensure that the plan includes the environmental information that is germane to the statutory responsibilities of such agencies.

e. The planning agreement will set forth the process whereby the parties will develop a plan that will have the characteristics set forth in Section 21206.

f. The planning agreement will set forth a process for identifying a funding source for preparing the plan.

g. The planning agreement will set forth a process for public participation throughout the plan development and review process to ensure that interested persons have an adequate opportunity to provide input to local agency and project proponents, including the notice provisions in section 21207. The public participation objectives of this section may be achieved through public working groups or advisory committees, established early in the process. At a minimum, the public process shall include the following:

1. A requirement that the draft plan shall be available for public review and comment for at least 60 days prior to the local agency's approval of that draft document. Preliminary public review documents shall be made available by the plan lead agency at least 10 working days prior to any public hearing addressing these documents. The review period specified in this subsection may run concurrently with the review period required under section 21207(a)

below. This subsection shall not be construed to limit the discretion of a public agency to revise any draft documents at a public hearing.

2. *A requirement to make available in a reasonable and timely manner all draft plans, development documents, memoranda of understanding, maps, conservation guidelines, species coverage lists, and other planning documents associated with a draft plan that are subject to public review.*

3. *A requirement that all public hearings held during plan preparation or review for approval are complementary to, or integrated with, those hearings otherwise provided by law.*

4. *An outreach program to provide access to information for persons interested in the plan, including landowners, with an emphasis on obtaining input from a balanced variety of affected public and private interests, including state and local governments, county agricultural commissioners, agricultural organizations, landowners, conservation organizations, and the general public.*

b. *Notice of the proposed plan, including a general explanation of the nature of the plan, shall be published in at least one newspaper of general circulation within the jurisdiction of the local agency considering the plan. Before local agency approval of the planning agreement, the public shall have 21 calendar days to review and comment on the proposed planning agreement.*

c. *The local agency may enter into the planning agreement if it determines that the planning agreement satisfies the criteria required for such planning agreements and otherwise meets the goals of the state and community. The local agency shall take into account any public comments in reaching its decision. A local agency's entering into the planning agreement is not a project pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.*

21205. The Development of the Plan

a. *Before beginning the planning process, the local agency must find that sufficient funds are available to support the planning process.*

b. *After the local agency makes such finding, the parties to the planning agreement may commence the planning process as set forth in the planning agreement.*

c. *The local agency is responsible for ensuring that the process for public participation set forth in the planning agreement is carried out.*

d. *After completing the planning process, the parties will prepare a detailed draft plan that meets the criteria set forth in the planning agreement and includes the contents set forth in Section 7. The draft plan will be made available for public review pursuant to Section 5(g) and the public participation requirements of the planning agreement.*

21206. The Contents of the Plan. The plan will include the following:

a. A detailed description of development and conservation projects that will be included in the planning area, including the following:

1. The development projects included in the plan will, in the aggregate: (1) be consistent with state planning priorities set forth in Government Code 65041.1, (2) be consistent with 20-year projections of housing needs developed through the Regional Housing Needs Assessment Process, any successor process; (3) promote infill development; (4) contain design criteria identifying architectural, landscape and other design elements acceptable to the community; and (5) encourage efficient development patterns.

2. The conservation projects included in the plan will, in the aggregate: (1) affirmatively promote the protection, preservation, restoration, and enhancement of habitat, open space, and agricultural resources beyond what is necessary to mitigate the adverse impacts of the development project on the environment; and (2) substantially mitigate significant effects of the development project on the environment to the extent feasible. [Should we further specify the amount of conservation required, or leave that to the planning agreement?]

3. The plan will be consistent with other goals of the community, as identified through the planning process.

b. A detailed statement regarding how the proposed projects within the planning area will meet the criteria set forth in the planning agreement.

c. A detailed statement regarding the procedure for ensuring that subsequent implementation of any development project included in the plan will include implementation of the identified conservation projects, including:

1. The estimated time frame and process by which the conservation measures are to be implemented.

2. The method for ensuring adequate funding to carry out the conservation projects identified in the plan, including establishment of a conservation fund by which persons engaged in development projects substantially consistent with the approved plan could proportionally contribute to the implementation of the conservation measures.

3. A method for ensuring that the conservation projects will be enforceable, including by granting an enforceable conservation easement to a qualified third party.

4. An ongoing review and reporting program to evaluate consistency of development with the plan and to inform the local agency and the public regarding such evaluation.

5. A procedure for making necessary and appropriate changes to the development and/or conservation components of the plan if the implementation of the plan is not meeting the criteria set forth in the plan.

d. A process whereby a person who desires to undertake a project described in the plan must enter into an implementation agreement with the local agency that requires compliance with the plan. The implementation agreement must include specific terms and conditions which, if violated, would result in specified penalties.

e. A detailed environmental analysis of the plan, including the following:

1. All significant effects on the environment of the plan.

2. Any significant effect on the environment that cannot be avoided if the project is implemented.

3. Any significant effect on the environment that would be irreversible if the project is implemented.

4. Mitigation measures proposed to minimize significant effects of the development and conservation projects on the environment, to the extent feasible.

5. Alternatives to the plan.

6. The growth-inducing impact of the plan.

7. A statement briefly indicating the reasons for determining that various effects on the environment of the plan are not significant and consequently have not been discussed in detail in the plan.

8. Any additional environmental information that is germane to the statutory responsibilities of the federal, state and local agencies that would have responsibility for carrying out or approving the plan and the development and conservation projects contemplated by the plan.

f. Mitigation measures or alternatives that would substantially reduce any significant adverse effects on the environment to the extent feasible as described in Section 7(e).

21207. Notice of Public Availability. The public process implemented by the local agency pursuant to the planning agreement will include the following:

a. The local agency shall make the draft plan available for public review at the headquarters of the local agency and shall distribute copies of a Notice of Public Availability. A minimum of 30 days following distribution of the Notice of Public Availability shall be allowed for public review and comment regarding the plan.

b. Copies of the Notice of Public Availability shall be distributed as follows:

1. A copy shall be sent to the office of the County Clerk of the county in which the proposed project or activity would take place and, if applicable, to the planning department of the city with jurisdiction over the project or activity, for posting at the customary place for posting environmental matters.

2. If the local agency determines that the proposed project or activity is of statewide, regional, or area wide environmental significance, a copy shall be submitted to appropriate state agencies, through the State Clearinghouse, for review and comment.

3. A copy shall be sent to any other person upon written request.

4. Copies of the Notice of Public Availability may also be posted or made available at such other locations as the local agency deems desirable and feasible to provide adequate public notice.

c. Concurrent with the distribution of the Notice of Public Availability, the local agency shall consult with, and request written comments from, all public agencies with jurisdiction by law over the development and conservation projects proposed in the plan.

d. Nothing herein preempts any otherwise applicable notice requirements under state or local planning and zoning law. [Should we specify notice be provided to property owners within a certain distance from the proposed planning area? Should we specify public hearings?]

21208. The city or county can approve the draft plan after making the following findings, based upon substantial evidence in the record:

a. The plan has been developed consistently with the process identified in the planning agreement.

b. The plan, if completed, would substantially accomplish the objectives set forth in the planning agreement.

c. The plan incorporates mitigation measures or alternatives which would substantially reduce any significant adverse effects of the development and conservation projects on the environment to the extent feasible. If significant adverse effects will likely result even after the inclusion of feasible mitigation measures or alternatives, the local agency may approve the application if the local agency first makes findings in accordance with Section 20181 of the Public Resources Code.

21209. The local agency shall prepare a written summary and response to all significant environmental points raised during review of the plan. Within five working days, the local agency shall file a Notice of Decision, which indicates whether the plan will, or will not, have a significant effect ton the environment with the Secretary of the Resources Agency. The Notice of Decision shall include a statement that the local agency approved the plan.

21210. If a plan is prepared and finalized consistent with this section, any subsequent project undertaken that is substantially consistent with the plan shall require no CEQA review provided such subsequent project meets the following requirements:

a. The lead agency for such project must be the local agency identified in the plan.

b. The local agency must make the project proposal available for public review at the headquarters of the local agency and shall distribute copies of a Notice of Public Availability as per Section 8 above.

c. The local agency must approve the project if it makes the finding that the project is substantially consistent with the plan.

d. The local agency must prepare a Notice of Decision limited to its determination that the project proposal is substantially consistent with the plan and therefore approved.

21211. [Should this statute establish a mechanism that would allow projects that are related, but not substantially consistent with the plan, or should this be left for general planning law?]

21212. Enforcement.

a. The project proponent must enter into an implementing agreement with the local agency that will require the project proponent to develop its project in a manner that is consistent with the plan.

b. The implementation agreement shall include specific terms and conditions which, if violated, would result in specified penalties.

c. The local agency shall enforce the plan and the provisions of the implementation agreement.

d. The local agency's responsibilities under this Section 13 may be enforced pursuant to Section 1085 of the Code of Civil Procedure.

21213. Limitations

a. Any action or proceeding to attack, review, set aside, void or annul the local agency's approval of the plan on the grounds of noncompliance with this section shall be commenced within 30 days from the date of the public agency's decision to carry out or approve the plan.

b. Following such 30-day period (if no action or proceeding is brought) or following the conclusion of any such action or proceeding (including the exhaustion of any appeal period) no person shall have standing to bring an action or proceeding to attack, review, set aside, void, or annul the plan.

c. With respect to any projects substantially consistent with the plan, upon approval of such project by the local agency, the project cannot be challenged except on the ground that it is not substantially consistent with the plan. Any action on such ground must be commenced within 30 days from the date of the local agency's findings and shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

21214. The procedures for implementing this chapter shall be consistent with any guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083 only to the extent such guidelines expressly relate to this section.